

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
KAREN R. BAKER, JUDGE

DIVISION III

CA06-1142

APRIL 25, 2007

TAMMATHA ENGLAND DAVIS

APPELLANT

v.

JERRY L. ENGLAND, JR.

APPELLEE

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT  
[E-01-18]

HONORABLE JIM D. SPEARS, JUDGE

DISMISSED

This is an appeal from an order entered June 14, 2006, by the Circuit Court of Sebastian County, Arkansas, denying the appellant's motion to dismiss brought pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), codified at Arkansas Code Annotated 9-19-201 (Repl. 2002) *et. seq.* Appellant asserts that the circuit court erred and abused its discretion by failing to dismiss the proceedings pursuant to the Act, specifically pursuant to Arkansas Code Annotated § 9-19-206(b), regarding simultaneous proceedings, and pursuant to Arkansas Code Annotated § 9-10-207, regarding inconvenient forum.

In this appeal, appellant takes issue with the judge's finding that the court had jurisdiction over this controversy. However, it does not appear from the record that appellee's petition seeking modification of the custody and visitation rights has been resolved in the Arkansas court. Under the

circumstances, we are not able to examine the trial court's determination regarding jurisdiction because the order setting forth this decision is not one that is subject to review at this time. In order for a judgment to be final, it must dismiss the parties from the action, or conclude their rights to the subject matter in controversy. *Kelly v. Kelly*, 310 Ark. 244, 835 S.W.2d 869 (1992). While the trial court's jurisdiction of the subject matter is essential to an action, a ruling by the trial court that it has proper jurisdiction, even if erroneous, does not render such an order appealable. *Lester v. Lester*, 48 Ark.App. 40, 889 S.W.2d 42 (1994). It is the duty of the appellate court to determine whether or not it has jurisdiction. *Associates Fin. Servs. Co. v. Crawford County Mem. Hospital*, 297 Ark. 14, 759 S.W.2d 210 (1988). No final order has been entered in this matter; therefore, we must dismiss the appeal.

We recognize that our procedural limitations are problematic when applied to the facts of this case. The parties to this case were divorced in California on February 18, 1999. The judgment in that case awarded joint legal custody of the minor children, with primary physical custody being placed with appellant. Proceedings beginning in January 2001 in the Arkansas circuit court began a custody and jurisdictional dispute between the state trial courts of Arkansas and Alabama. On July 11, 2002, the Alabama court retained permanent jurisdiction over the minor children, and following his unsuccessful appeal in Alabama from that order, appellee has appeared before the Alabama court and litigated contested child custody related issues in the Alabama court. At the time the appeal before us was filed, the most recent appearance by appellee in the Alabama court was in February 2006 answering a motion by appellant to have appellee held in contempt of the Alabama order.

Despite the apparent finality of the Alabama order, the appeal before us is premised on the theory that the Arkansas court erred by failing to decline any further jurisdiction over the minor

children. The circuit court clearly retained jurisdiction and announced its intention to enter a judgment in the future regarding the issues pending before it. Although appellant argues that the Alabama trial and appeal courts have entered final judgment in that State, it does not appear from the record before us that appellant attempted to register the final Alabama judgment for enforcement in this State, or that the trial court rejected the registration of that judgment.

Accordingly, no final order concluding this matter is before us, and we must dismiss the appeal.

HART and GRIFFEN, JJ., agree.